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ADDRESS

OF

SILAS W. GARDINER,

(REPRESENTING THE CENTRAL YELLOW PINE ASSOCIATION.)

DELEGATE TO THE

INTERSTATE COMMERCE
LAW CONVENTION,

HELD AT

CHICAGO,

OCTOBER 26th AND 27th, 1905.

SOME REFLECTIONS
AS TO
PRESIDENT ROOSEVELT'S RECOMMENDATIONS
FOR
Governmental Regulation of
Freight Rates
through the
Administrative Arm of the Government,
Rather than through the Judiciary.

The Interstate Commerce Law Convention is the outgrowth of efforts by the business interests of the United States to impress upon congress the extent and persistence of the demands of the people of all parts of the country for legislation outlined and asked for by the president in his last annual message to congress.

He asked for a law that would clothe the Interstate Commerce Commission with power to investigate any rate that may be complained of as excessive or unjust, and if said rate should be found to be unreasonable or unjust to substitute a rate (a maximum rate supposedly) that it should adjudge as reasonable and fair to both the shipper and to the railroad, and that the rate so substituted shall go into effect and so remain unless or until reversed by a competent court of review.

The Interstate Commerce Law Convention is now gathered here in response to the call of the chairman, Hon. E. P. Bacon, of September 18, 1905, for the purpose of considering ways and means of carrying out and having enacted into law the aforesaid suggestions of the president as to the placing control of rate making under governmental regulations. The convention is not called or convened to devise or to consider any other plan or method of dealing with the subject of governmental regulation of railroads or of rates.

While this convention does not stand for any particular bill or measure, the legislation needed to meet the requirements of present conditions is substantially that which has been formulated in a modified form of the Esch-Townsend bill. It is endorsed by the president and also is satisfactory to the Interstate Commerce Commission.

It provides that the rulings and orders of the governmental authority shall go immediately into effect (within a reasonable time, which would mean simply time enough to prepare and issue a new rate sheet). This will prevent the years of litigation that are now necessary in order to get a disputed rate question settled. To illustrate this point, the cattlemen of Texas have been contending against what they believe to be an excessive rate, for several years. The Central Yellow Pine Association has been litigating against an advance of two cents a hundred, on yellow pine, which was put into effect April 15, 1903, and the end of the case is not yet in sight, although tens of thousands of dollars have been swallowed up in expenses of litigation. The association has had a favorable decision by the Interstate Commerce Commission, and the Georgia Lumbermen have won

their case in the federal court of Georgia, but the railroads still continue to enforce the advanced rate, and it amounts to millions of dollars that the railroads are gathering in of the shippers' money.

The railroad people and those who are allied with them in opposition to any sort or kind of government regulation that would regulate, are pleased to sneer at the proposed bill, and to characterize it as "confiscatory legislation," and "commercial lynch law" and that such a law, "would result in slow paralysis of railway initiation," etc. Their whole campaign has been one of sophistry and misrepresentation.

There are in the United States something like 206,000 miles of railroads, of which mileage about 125,000 miles, over one-half, are under the jurisdiction of state laws and state commissions, as to their powers of rate making within the borders of the respective states. Does any one ever hear of "confiscatory rates" or "commercial lynch laws" in these states?

It is simply preposterous and those who make these claims and charges and predict the direful calamities to follow any efforts to control rate making, and who invent the sensational catch-phrases above quoted, know that they are totally misrepresenting the president and his recommendations for governmental control of rates. They do it simply to befog and confuse the situation and mislead the people. They know that in those states where rates are controlled, the railroads are as prosperous as are the railroads in the country at large.

They also know that neither the Esch-Townsend bill nor any other bill that has been proposed contemplates the general overhauling of the railroad freight schedules, and arbitrary substitution of new rates.

These bills assume that rates generally are fair and satisfactory. It is only when rates are advanced or complained of as unjust that the government is to investigate and decide as to the justness of the challenged rate.

To make this question perfectly clear and thus emphasize the seriousness of the conditions as they now prevail, let us for a moment suppose that conditions were just the reverse of what they are. Let us suppose that the government has had for a generation the unquestioned or undisputed right, after a rate has been complained of, and upon investigation found to be excessive and unjust, to name a rate that it considers just and fair to the shipper and compensatory to the railroad—a maximum rate.

Let us now suppose that the railroads should ask the people and congress to abrogate this right and safeguard for the people and to relegate the entire rate making power to the railroads, without recourse or appeal; that the interests of the people should be completely turned over, body and soul, to the tender mercies of the railroads.

Would there not go up from the people a loud cry unto Jupiter that they might be spared from so calamitous a consummation?

I would ask in all candor is there a senator or a congressman who would have the nerve, the temerity or the audacity to recommend or advocate such a measure?

AND YET THIS IS THE VERY CONDITION THE PEOPLE ARE NOW IN. THE RAILROADS, UNDER THE LAWS AS THEY NOW STAND, ARE THE SOLE RATE-MAKING POWER OF OUR LAND. THE COURTS ARE DENIED JURISDICTION TO

INTERFERE IN BEHALF OF THE PEOPLE, AS RATES ONCE PROMULGATED AND DULY PUBLISHED BECOME THE LEGAL RATES FROM WHICH THERE IS NO ESCAPE, BECAUSE THE COURTS HAVE NO POWER OR AUTHORITY TO SAY WHAT IS A FAIR OR JUST RATE, AND IT IS ASTOUNDING THAT SOME OF OUR LAW MAKERS KNOWING THIS TO BE TRUE CAN HAVE THE NERVE, THE TEMERITY AND THE AUDACITY TO OPPOSE SUCH AN AMENDMENT TO OUR LAWS AS THE PRESIDENT RECOMMENDS, AND IT IS PASSING STRANGE THAT THEY WILL TOLERATE THE ASSERTIONS OF RAILROAD MANAGERS THAT THIS PROPOSED MEASURE IS NOTHING SHORT OF "CONFISCATORY LEGISLATION" AND "COMMERCIAL LYNCH LAW."

Let it be remembered that under the laws now in effect the railroads are fully protected against any sort of confiscation. The courts accept jurisdiction and will always be ready to abrogate a rate that is manifestly too low, or confiscatory, but they cannot on the other hand, protect the people against an excessive or unjust rate, because the rates are made according to law, and are legal rates, although they may be extremely extortionate and even confiscatory. ANY RATE THAT THE RAILROADS MAY CHOOSE TO MAKE IS LEGAL IF IT IS DULY PUBLISHED, AND NO COURT CAN SET IT ASIDE AND SUBSTITUTE A FAIR RATE. IT CAN ONLY BE DONE BY THE ADMINISTRATIVE ARM OF THE GOVERNMENT, and so it is that while the railroads may confiscate the property and the fortunes of individuals and have done so in many instances, there is not at present any legal method of preventing a continuation of such conditions; and this is why it is so important that President Roosevelt's recommendations shall at the coming session of congress be enacted into law, in order that the rulings and orders of

the government may be enforced and made immediately effective.

THERE IS ANOTHER THING THAT WE SHOULD REMEMBER IN CONNECTION WITH THIS MATTER, TO-WIT: THE RAILROADS HAVE NOTHING AT STAKE, AND THEREFORE NOTHING TO LOSE IN ADVANCING RATES, BUT THEY HAVE MILLIONS TO GAIN. THE REASON IS THAT IF THE PEOPLE FIGHT AGAINST THE ADVANCED RATES THE RAILROADS CAN UNDER PRESENT CONDITIONS KEEP THE MATTER IN THE COURTS FOR FOUR OR FIVE YEARS AND ALL THE TIME CONTINUE TO COLLECT THE ADVANCED RATES, and at the end of it all the most that can be done is to order the railroads to desist from any longer charging the rate. In the meantime the railroads have gathered in millions of dollars of the people's money and there is no recourse or help for it. This is clearly shown in the cases of the cattle men of Texas and the Central Yellow Pine Association against the railroads now in courts. The controversy as to whether the commission should name a "maximum" rate or a "reasonable" rate is not at all relevant to our discussion, as these words under the proposed law would be considered as synonymous terms. As before stated, the object of the convention is simply to devise ways and means to secure legislation along the lines recommended by President Roosevelt.

FURTHER COMMENT.

It has been made clear, both during the convention and since, by the pronouncements of Hon. E. P. Bacon, Chairman of the Interstate Commerce Convention, by Judge S. H. Cowan of Fort Worth, Texas, by Judge Joseph H. Call of California and by Senator Philander C. Knox of Pennsylvania, formerly United States Attorney General, that there is no need of creating any new or special courts to handle or adjudicate the cases that may arise as the result of this proposed legislation. The courts as at present constituted and administered are fully competent and the laws provide for their increase or enlargement, to any extent necessary for the dispensation of justice to everybody.

The only legislation needed is simply that asked for by the President, and it should be broad enough to cover all interstate transportation service, including all charges, regulations and exactions in connection therewith, whether provided by the railroads themselves or through arrangements with others, and should confer the authority of the government to examine and supervise the books and accounts of transportation companies as it does the national banks.

SILAS W. GARDINER.

November 10th, 1905.

